



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536

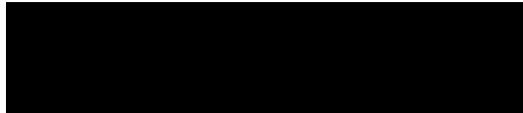


File: A76 862 527 Office: Nebraska Service Center

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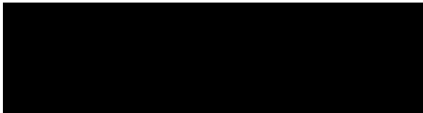
JAN 30 2001

IN RE: Petitioner:
Beneficiary:



Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(4)

IN BEHALF OF PETITIONER:



PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

Identification data deleted to
prevent clearly unwarranted
invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Nebraska Service Center, and a subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner on a motion to reconsider. The motion will be dismissed.

The petitioner is a church. It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(4), to serve as a music director and organist. The director denied the petition determining that the petitioner had failed to establish that the prospective occupation is a religious occupation. The director also found that the petitioner had failed to establish the beneficiary's two years of continuous religious work experience. The Associate Commissioner affirmed the decision of the director on appeal.

On motion, counsel argues that the beneficiary is eligible for the benefit sought. Counsel submits a brief from the Associate General Counsel for the United States Catholic Conference who asserts that it is unconstitutional for the Service to determine what constitutes a religious occupation.

8 C.F.R. 103.5(a)(3) requires that a motion for reconsideration state the reasons for reconsideration and be supported by any pertinent precedent decisions. A motion to reconsider must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

8 C.F.R. 103.5(a)(4) states that a motion that does not meet applicable requirements shall be dismissed.

The motion to reconsider does not contain precedent decisions to show that the previous decisions were based on an incorrect application of law or Service policy. Further, the motion does not establish that the decision was incorrect based on the evidence of record at the time of the initial decision. Counsel submits an argument that the Service may not determine what constitutes a religious occupation. The Service agrees that determining the status or the duties of an individual within a religious organization is not a matter under the Service's purview; however, determining whether that individual qualifies for status or benefits under our immigration laws is another matter. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. Matter of Hall, 18 I&N Dec. 203 (BIA 1982); Matter of Rhee, 16 I&N Dec. 607 (BIA 1978).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. That burden has not been met. Accordingly, the previous decisions of the

director and the Associate Commissioner will not be disturbed, and the motion will be dismissed.

ORDER: The motion is dismissed.